



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Engineers International, Inc.
File: B-224177
Date: December 22, 1986

DIGEST

Agency reasonably evaluated protester's proposal as outside the competitive range where proposal properly was downgraded under the two most important criteria in solicitation's evaluation scheme, leaving protester's score so much lower than other offerors' that protester did not have a realistic chance of receiving award.

DECISION

Engineers International, Inc. (EI), protests the rejection of the proposal it submitted in response to request for proposals (RFP) No. J0167009, issued by the Department of the Interior. The RFP is for geologic and geotechnical assessment services in northeastern Pennsylvania for monitoring areas detected as being in danger of subsidence, that is, surface collapse from underground coal mining activities. EI complains that its proposal was eliminated from the competitive range without EI's being afforded the opportunity for discussions and proposal revision. We deny the protest.

The RFP provided for award to the offeror whose proposal represents the combination of technical merit and cost most favorable to the government, and that technical merit was considered of greater importance than cost. With regard to technical merit, the solicitation identified in descending order of importance five evaluation criteria as follows: (1) depth of experience and competence in executing geotechnical studies in subsidence; (2) qualification and commitment of personnel and facilities, and overall capabilities for the work; (3) aerial photogrammetric capability and experience; (4) understanding all elements of the statement of work; and (5) quantitative comprehension of the work. The RFP further specified that the first factor, depth of experience, was of the greatest importance, with the next two factors being of equal weight and more important than the last two.

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Interior received six proposals in response to the RFP. Three of the proposals, including EI's, were evaluated as being very weak and technically unacceptable. The agency found that while EI demonstrated experience in prior investigations of surface subsidence associated with abandoned mine lands, problems with EI's past performance on Interior contracts involving abandoned mine reclamation projects--repeated failure to meet deadlines for the delivery of reports, and submission of incomplete reports--warranted downgrading EI significantly under the first two criteria. In addition, Interior found that EI had not demonstrated in-house photograph interpretation capability or experience in the aerial monitoring of subsidence, and that EI's proposal failed to show any commitment from an aerial photogrammetric subcontractor with such experience. Although EI did list the qualifications of one subcontractor in this area, Interior discounted it due to EI's statement that the firm would take bids on this subcontract after receiving the award. Consequently, EI's proposal also was significantly downgraded under the third evaluation criterion. Based primarily on these deficiencies, EI's total evaluation score was extremely low and substantially lower than the scores of three other offerors. Interior eliminated EI's proposal from the competitive range based on the view that EI had no chance at receiving the award.

Immediately following receipt of Interior's written notification that its proposal was not included in the competitive range, EI protested to our Office. Interior has suspended the evaluation process pending our decision on EI's protest.

EI objects to the emphasis placed by the agency on its failure to commit to an aerial photogrammetric subcontractor. While conceding that it stated in its proposal that photogrammetric services would be obtained by bid after award of the contract, EI emphasizes that the listed subcontractor's qualifications were set forth as an example of the quality of the subcontractor EI would consider. EI argues that Interior's concern as to the commitment of a subcontractor easily could have been resolved by conducting discussions with EI.

The competitive range in a negotiated procurement consists of all proposals that have a reasonable chance of being selected for award, including deficient proposals that are reasonably susceptible of being made acceptable through discussions. Fairchild Weston Systems, Inc., B-218470, July 11, 1985, 85-2

C.P.D. ¶ 39. The determination of the competitive range is a matter primarily within the discretion of the procuring agency, which we will not overturn absent clear evidence that the determination lacked a reasonable basis. Proffitt and Fowler, B-219917, Nov. 19, 1985, 85-2 C.P.D. ¶ 566. In addition, we have held that even a proposal that is rated technically acceptable may be excluded from the competitive range if, in light of the relative quality of the other proposals, the proposal has no real chance of being selected for award. JDR Systems Corp., B-214639, Sept. 19, 1984, 84-2 C.P.D. ¶ 325.

We find that the technical rating EI received for its failure to commit to an aerial photogrammetric subcontractor was reasonable and in accordance with the RFP's stated evaluation criteria. The RFP's statement of work specifically provided that areas suspected of imminent subsidence would be monitored in large part by using surface topography and, as stated above, aerial photogrammetric capability and experience was an important technical evaluation factor--only experience and competence in executing geotechnical studies in subsidence was more important under the RFP's evaluation scheme. Although the significance of this aspect of the project therefore should have been evident, EI chose not to specify the firm it would use to perform this work. We think it was entirely reasonable for the agency to conclude that the mere possibility that EI later would contract with a capable firm provided little or nothing to be evaluated under this criterion. We therefore find nothing unreasonable in EI's receiving a low rating for aerial photogrammetric capability and experience.

While this deficiency conceivably could have been resolved through discussions, we do not believe Interior was required to hold discussions on this point. The RFP's instructions to offerors for preparing their proposals clearly required the submission of the names and full resumes of the specific personnel offerors intended to assign for direct work on the project, including subcontract personnel, and also required the submission of a statement of assurance that the listed personnel would be available. EI ignored these instructions in addressing the aerial photogrammetric requirement. We have held that an agency is not required to hold discussions based on proposal deficiencies or weaknesses resulting from the offeror's own lack of diligence or competence in preparing its proposal. Dynalelectron Corp., B-199741, July 31, 1981, 81-2 C.P.D. ¶ 70. In our view, ignoring explicit instructions and neglecting to propose a clear

means of satisfying a major performance requirement that is the subject of a separate major evaluation criterion evidence a lack of diligence, and EI's failure in this regard thus did not have to be made the subject of discussions.

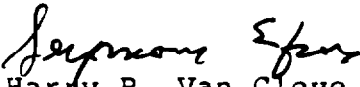
EI's downgrading under the first two evaluation criteria based on poor past performance was not mentioned in the written notification of rejection, so the record does not include much argument on the point. The evaluation records clearly show, however, that the evaluators discounted EI's demonstrated experience in theoretical subsidence studies and the qualifications of EI's proposed staff based on EI's prior failure to meet critical delivery deadlines, stay within original budgets, and deliver complete reports in prior contracts. The evaluators concluded that, all factors considered, there was a low probability that EI would complete the current project adequately, on time, and on budget. The evaluators apparently deemed particularly significant EI's poor performance of a contract for the theoretical study of subsidence problems, which formed the basis for the instant RFP, noting that EI's final report was late and so incomplete that Interior had to reevaluate the possible subsidence sites suggested in the report for investigation.

Where, as here, an RFP provides for the evaluation of offerors' prior experience in determining technical acceptability, the procuring agency properly may take into consideration the acceptability of the contract performance comprising that experience. See Kirk-Meyer, Inc., B-208582, Sept. 2, 1983, 83-2 C.P.D. ¶ 288, and Decision Sciences Corp., B-183773, Sept. 21, 1976, 76-2 C.P.D. ¶ 260, cited therein. Interior did so here, and as the record contains no information suggesting that the evaluators' opinions as to EI's past performance were unfounded, we will not question the downgrading of EI on this basis.

We note that, in responding to the agency's reference to EI's performance problems in its report on the protest, EI does not deny that it experienced problems, but states that the agency never mentioned these problems during performance. EI suggests that our Office obtain a copy of the technical project officer's evaluation report on EI's theoretical study contract to determine whether the agency actually had problems with EI's performance. We think this is unnecessary in view of the clear indication in the evaluation record that problems were perceived by Interior. In any case, it is the responsibility of EI, not our Office, to support its arguments with all available documentation; it does not appear that EI has even attempted to obtain the documentation.

We conclude that EI's low evaluation under the two most important criteria in the RFP's evaluation scheme, and the company's low score for aerial photogrammetric capability, were reasonable, and that Interior properly found EI had no realistic chance of receiving the award. Indeed, the record is clear that given the high level of the scores of the two highest rated offerors, EI's deficiency in the aerial photogrammetric capability area, by itself, would have precluded EI from receiving the award. Interior therefore properly excluded EI from the competitive range.

EI's protest is denied.

for 
Harry R. Van Cleve
General Counsel